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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,743	03/06/2002	Tomoko Yoshida	1614.1223	5251
21171	7590	01/10/2008	EXAMINER	
STAAS & HALSEY LLP			ARAQUE JR, GERARDO	
SUITE 700			ART UNIT	PAPER NUMBER
1201 NEW YORK AVENUE, N.W.			3629	
WASHINGTON, DC 20005			MAIL DATE	DELIVERY MODE
			01/10/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/090,743	<b>Applicant(s)</b> YOSHIDA, TOMOKO	
	<b>Examiner</b> Gerardo Araque Jr.	<b>Art Unit</b> 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Priority*

1. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 2001-190920, filed on June 25, 2001.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. **Claims 1 and 4 – 8** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant claims calculating the expected length of hair with the following formula:

Expected hair length = {[ (Future hair cut date) – (Last hair cut date)] \* (Hair growth rate)} + (Length of hair from last hair cut date)

However, the Examiner asserts that the hair growth rate is not a constant, but a variable and, as a result, would not make it possible to calculate the expected hair length with the above formula (see provided NPL About.com: Skin & Beauty). As a

result, the applicant has failed to properly provide sufficient guidance to enable one to carry out the invention. That is to say, the above formula fails to provide the expected hair length and, as a result, would make it impossible to provide the intended hairstyle to the customer since the expected hair length is unknown.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claim 1 and 4 - 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Geerlingss (US Patent 6,073,112)** in view of **Blancato (US Patent 4,823,285)**.

6. In regards to **claim 1**, **Geerlings** discloses, "...communication system of the present invention accounts for individual shopping behavior of the consumer and tailors the communication accordingly (with respect to content and timing (i.e., when to contact the consumer)(Column 1 Lines 51 – 56)." Moreover, "the dynamic or continual resegmentation of customers based on changes in shopping activity/behavior ensures that pertinent and timely communications are made (automated) by the present invention system (Column 3 Lines 40 – 43)." Furthermore, "...the present invention communication system automates preparation and transmission of written and/or verbal communications based on behavior (e.g., shopping activity) of customers (Column 3 Lines 16 – 20)."

**Geerlings** further discloses that the system, "...tailors the communication accordingly (with respect to content and timing (i.e., when to contact the consumer) (Column 1 Lines 54 – 56)." Moreover, the system determines the appropriate time to contact the individual based on, "...cumulative purchase behavior of a consumer, historic behavior or expected future behavior, or any combination thereof (Column 2 Lines 26 – 30)."

Further still, as best understood by the examiner, **Geerlings** also discloses that necessary information regarding the individual is stored in the database and is accessed when needed, such as retrieving the modified images of the individual that will be attached to the notification. Moreover, an "...Event History Subtable **26** is formed of records indicating the various so-called events **37**...with which a customer has been involved. That is, each record identifies (i) a customer by customer number, and (ii) an event **37c** by event number ("Event NR"). The event number serves as a cross reference to a record in the strategy database **21** where the event is predefined by the merchant. (Column 6 Lines 50 – 57).

**Geerlings** fails to disclose the system to be used for visiting a hair salon, as well as calculating the expected length of hair.

However, **Geerlings** discloses a system for enhancing and improving communications from a merchant to his customers (Col. 3 L. 15 – 17). One of ordinary skill in the art would have found it obvious to use the system disclosed by **Geerlings** as an effective means of communicating information to its customers to visit a hair salon based on the customer's prior behaviors.

Further still, **Blancato** discloses a method of capturing an image of an individual and digitally modifying the individual's current hairstyle with various hairstyles that the individual may be interested in having (Column 2 Lines 1 - 17). The image is then modified in order to place the image of the face and the new hairstyle together on a screen (Column 2 Lines 1 – 17). The various modifications are then stored and would obviously be held under file for later dates for when the individual would like to try something new and different.

Moreover, the Examiner asserts that calculating the expected length of hair would have been obvious to one having ordinary skill in the art. That is to say, it would have been obvious to extrapolate the expected hair length if the number of days between hair cuts is known as well as the hair growth rate of a customer, based on collected data concerning the customer.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to include **Blancato's** method of storing information concerning various hairstyles interests, that an individual would want, with that of **Geerlings** so that when an automatic notification is sent to an individual for a haircut appointment, based on the individual's past record of periodic visits, can be attached with images of possible hairstyle that the individual may like.

7. In regard to **claims 4 – 7**, **Geerlings** discloses a computer system that gathers information, which is stored within 2 databases (Column 2 Lines 18 – 25), about an individual's shopping behavior and times the communication with the individual based the individual's shopping behavior (Column 1 Lines 51 – 56; Column 2 Lines 26 – 30).

The first database stores identification and demographics of recipients while the second databases stores desired communication. It would be obvious to one of ordinary skill that the data stored in the databases do not necessarily need to be exactly the same information as is found in **Geerlings**, but to what would be suitable to the person using the system, such as the information disclosed by **Blancato**, which will be discussed later. Moreover, the system uses the information that was gathered about the individual in order to transmit information at the appropriate time interval that may interest the individual through various communication means (Column 5 Lines 39 - 46; Column 14 Lines 24 - 30).

However, **Geerlings** fails to show that the databases contain information of hairstyles that the individual would like, as well as calculating the expected length of hair.

**Blancato** discloses a method of capturing an image of an individual and digitally modifying the individual's current hairstyle with various hairstyles that the individual may be interested in having (Column 2 Lines 1 - 17). The image is then modified in order to place the image of the face and the new hairstyle together on a screen (Column 2 Lines 1 - 17). The various modifications are then stored and would obviously be held under file for later dates for when the individual would like to try something new and different. Moreover, the Examiner asserts that calculating the expected length of hair would have been obvious to one having ordinary skill in the art. That is to say, it would have been obvious to extrapolate the expected hair length if the number of days between hair cuts

is known as well as the hair growth rate of a customer, based on collected data concerning the customer.

Moreover, the Examiner asserts that calculating the expected length of hair would have been obvious to one having ordinary skill in the art. That is to say, it would have been obvious to extrapolate the expected hair length if the number of days between hair cuts is known as well as the hair growth rate of a customer, based on collected data concerning the customer.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to include **Blancato's** method of storing information concerning various hairstyles interests, that an individual would want, with that of **Geerlings** so that when an automatic notification is sent to an individual for a haircut appointment, based on the individual's past record of periodic visits, can be attached with images of possible hairstyle that the individual may like.

8. In regards to **claim 8**, **Geerlings** discloses wherein the second database stores indications of desired communication including indications of times for initiating communications and indications of contents of communications. As discussed above one skilled in the art would have found it obvious to use the system disclosed by **Geerlings** as an effective means of communicating information to its customers to visit a hair salon based on the customer's prior behaviors.

#### ***Response to Arguments***

9. Applicant's arguments with respect to **claims 1 and 4 - 8** have been considered but are moot in view of the new ground(s) of rejection.



**Relevant arguments**

10. The applicant argues that Page 15 Line 33 through Page 16 Lines 5 discusses dynamic change of hair length and a means of calculating the expected hair length. However, as discussed above, there is no support for calculating how to properly derive the hair growth rate of an individual since hair growth rate and loss is random and not seasonal or cyclic (**see provided NPL document About.com: Skin & Beauty**).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

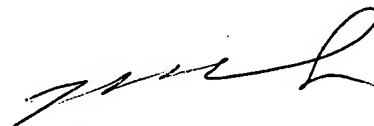
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GA  
1/2/08



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